

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEROME CEASAR ALVERTO,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,  
BARBARA J GRONSETH, DENISE  
LARSON, RON FRAKER, STATE OF  
WASHINGTON,

Defendants.

No. C12-5518 BHS/KLS

ORDER DENYING MOTION FOR  
COUNSEL

Before the Court is Plaintiff's Motion for Appointment of Counsel. ECF No. 9. Having carefully considered the motion and balance of the record, the Court finds that the motion should be denied.

**DISCUSSION**

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is discretionary, not mandatory.") However, in "exceptional circumstances," a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both "the likelihood of success on the merits [and]

1 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
2 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
3 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
4 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
5 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
6 1101, 1103 (9<sup>th</sup> Cir. 2004).

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8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
10 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
11 facts during litigation. But, if all that was required to establish the complexity of the relevant  
12 issues was a demonstration of the need for development of further facts, then practically all cases  
13 would involve complex legal issues. *Id.*

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15 Plaintiff states that he is unable to afford counsel. ECF No. 8. However, Plaintiff does  
16 not meet the criteria for the appointment of counsel and has not shown that he is unable to  
17 continue representing himself in this litigation. Plaintiff has demonstrated that he is able to  
18 articulate his claims in a clear fashion understandable to this Court. In addition this is not a  
19 complex case. This case does not involve complex facts, or law. This case will not require the  
20 use of experts or any other in-depth analysis or argument. In addition, Plaintiff’s incarceration  
21 does not increase the complexity of his case. “Most actions require development of further facts  
22 during litigation and a *pro se* litigant will seldom be in a position to investigate easily the facts  
23 necessary to support the case. If all that was required to establish successfully the complexity of  
24 the relevant issues was a demonstration of the need for development of further facts, practically  
25 all cases would involve complex legal issues.” *Wilborn*, 789 F.2d at 1331.  
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1 In addition, Plaintiff has made no showing that he is likely to succeed on the merits of his  
2 claim. Plaintiff has failed to demonstrate he meets the “exceptional circumstance” for an  
3 appointment of counsel in this case.

4 Accordingly, it is **ORDERED**:

5 (1) Plaintiff’s motion for counsel (ECF No. 9) is **DENIED**.

6 (2) The Clerk shall send a copy of this Order to Plaintiff.  
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9 **DATED** this 23rd day of July, 2012.

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12 Karen L. Strombom  
13 United States Magistrate Judge  
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